IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5544 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHAVNAGAR DISTRICT COOPERATIVEBANK LIMITED - Petitioner(s)
Versus
SHREE NANOPALIAD SEVA COOPERATIVE SOCIETY LIMITED & 9 - Respondent(s)

==========

Appearance :
MR SHIRISH JOSHI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,3 - 7, 7.2.2,7.2.3 - 9.
MR DP KINARIWALA for Respondent(s) : 2,
None for Respondent(s) : 7,
- for Respondent(s) : 0.0.0

MS.KIRAN PANDEY, AGP. for Respondent No.10.

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 02/07/2007

ORAL JUDGMENT

1 This petition has been preferred by Bhavnagar District Co-operative Bank Limited through its Manager on the strength of being a Federal Co.operative Society for the District of Bhavnagar. According to the learned Advocate for the petitioner, the petitioner Bank is a Central Financing Agency in Bhavnagar district and the respondent Co-operative Society, named Shree Nanopaliad Seva Co-operative Society Limited, is a member Society. Hence, according to the learned Advocate, the petitioner has supervisory powers in so far as respondent No.1 – Co.operative Society is concerned.

2 The facts which are not in dispute are that Secretary of respondent No.1 – Society demanded rise in salary through Gujarat Sahakari Karmachari Union. The same was not initially approved by respondent No.1 – Society. Hence, the said employee went before the Labour Court and obtained an award in his favour. The District Registrar initiated action under Section 84 of the Gujarat Co-operative Societies Act, 1961 and after obtaining audit report under the said provisions initiated action under Section 93 of the Act for recovery of the aforesaid sum viz. enhanced salary from the Members of the

Managing Committee of the Society. The action of the District Registrar was challenged by the Members of the Managing Committee before the Gujarat State Co-operative Tribunal. The Tribunal has vide impugned order dated 22.12.2000 in Appeal No. 322 of 1996 quashed and set aside the order made by District Registrar which has given rise to the present petition.

3 It is not necessary to enter into merits of the controversy for the reasons that follow hereinafter.

4 The learned Advocate for the petitioner has not been able to establish as to what is the locus standi of the petitioner to prefer this petition in so far as the petitioner Bank is concerned. For this purpose, the learned Advocate for the petitioner Bank has placed reliance on the following averments made in paragraph Nos. 1 and 2 of the petition.

> *"1 The petitioner is a Co-operative Federal Society and a Co-operative Bank registered under the Gujarat Co-operative Societies Act, 1961 ("Act" for short), and the rules framed thereunder. The petitioner-Bank is a Central Financing Agency in the Bhavnagar District . All the Societies registered in the Bhavnagar District are Members of the petitioner – Bank and are affiliated with the petitioner – Bank. The petitioner – Bank, as Central Financing Agency,*

advances loan to the Societies and the first respondent-Society is one of such Societies. The first respondent – Society, in its turn, advances loan to its Members who are mostly farmers in the area of operation of the first respondent- Society, as also helps and assists the Members in the form of seeds, pesticides, etc.

2 The petitioner-Bank has a statutory duty under the Act to examine the accounts of the first respondent-Society and to make reports to the Authorities of its performance. The petitioner-Bank is also to be consulted by the Registrar while passing an order under Section 81 of the Act removing Committee and appointment of an Administrator to look after of the affairs of the Societies. The petitioner-Bank is also an Agency of the Government to implement all the schemes and the projects whereby the Central Government and the State Government come out with an idea to help the farmers. In fact, the petitioner-Bank represents all the Cooperative Societies in the District so far as the dealings with the State Government and the Central Government and while implementing various schemes and projects are concerned. The petitioner-Bank has, thus, locus to challenge the order passed by the Honourable Gujarat State Cooperative Tribunal in the present writ petition, whereby, the Honourable Tribunal has quashed and set aside the order passed by the District Registrar under Section 93 of the Act, whereby, the respondents Nos. 2 to 9 were held responsible and liable for the loss caused to the first respondent-

Society.”

5 Having heard the learned Advocate for the petitioner and after taking into consideration the aforesaid averments made by the petitioner Bank, it is apparent that merely because the petitioner Bank is entitled to have access to the Books of Accounts of respondent No.1 Society on the basis of being the Central Financing Agency no further right to litigate on behalf of the respondent in appeal before the Tribunal i.e. the Registrar can come into play in so far as the petitioner Bank is concerned. Admittedly, the petitioner Bank was not a party to the litigation before the Tribunal. Hence, the petitioner cannot be termed to be “*a person aggrieved*”. The law is well settled that an order of subordinate Forum can be challenged by a person who is a party to the proceedings before the subordinate Forum and that too when the person is aggrieved by the order. The aforesaid principle has been extended in relation to even third parties viz. persons who are not parties before the subordinate Forum, provided such persons are aggrieved by the order made by the subordinate Forum. In the present case, the petitioner has singularly failed to establish the said link. Even if one accepts as contended by the learned Advocate for the petitioner that the petitioner Bank had advanced certain loans to respondent No.1 - Society, that by

itself would not grant any right to the petitioner to challenge the order made by the Tribunal in relation to a salary hike granted by the Society to one of its employees in compliance with order made by a competent Forum.

6 In the aforesaid set of facts and circumstances of the case, the petition does not merit acceptance on this preliminary issue and is accordingly rejected. Rule discharged. There shall be no order as to costs.

Sd/-
(D.A. Mehta, J.)

m.m.bhatt